

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS

(Motion re Jurisdictional Discovery)

Norfolk, Virginia  
June 23, 2022

BEFORE: THE HONORABLE ROBERT J. KRASK  
United States Magistrate Judge

## 18 | Appearances: (Via Zoom)

LEVIN SIMES ABRAMS, LLP  
By: William Cross

--- and ---

LENHART PETTIT

By: Brian Keith Brake  
Counsel for Plaintiff

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Rachel Atkin Hedley  
Jason Ryan Hodge  
Counsel for Defendant

1                   P R O C E E D I N G S

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3                   (Commenced at 11:02 a.m. as follows:)

4

5                   THE COURT: Good morning, everybody.

6                   Madam Clerk, if you'll call the case?

7                   COURTROOM DEPUTY CLERK: Grizzard v. LG Chem LTD, et  
8 al, Case 2:21cv469.

9                   Are the parties ready to proceed?

10                  MR. BRAKE: Yes, ma'am.

11                  MR. HODGE: Yes, Your Honor.

12                  MR. CROSS: Yes, Your Honor.

13                  THE COURT: I'll start just by asking counsel to  
14 identify themselves for the record. We'll start with plaintiff.

15                  MR. BRAKE: Yes, sir. Good morning. Brian Brake and  
16 William Cross admitted *pro hac vice*. Pleasure to be before you.

17                  THE COURT: Good morning.

18                  And for the defense?

19                  MR. HODGE: Jason Hodge and Rachel Hedley admitted *pro*  
20 *hac vice*.

21                  THE COURT: Good morning to you.

22                  MS. HEDLEY: Good morning, Your Honor.

23                  THE COURT: So I scheduled this hearing today solely  
24 to entertain argument on plaintiff's request for jurisdictional  
25 discovery. Counsel were notified by my chambers in advance of

1 the limited purpose for this hearing, so we will start with  
2 plaintiff.

3 MR. BRAKE: Yes, Your Honor. Thank you very much. If  
4 I may, William Cross is going to do the presentation this  
5 morning on this issue. Thank you.

6 MR. CROSS: With your permission, Your Honor,  
7 plaintiff would first like to say that this is not a fishing  
8 expedition. Plaintiff has introduced evidence in support of his  
9 opposition to LG Chem's motion to dismiss that demonstrates  
10 contact with Virginia that go beyond bear allegations.  
11 Plaintiff maintains that he's alleged facts sufficient to -- or  
12 that suggest the possible existence of personal jurisdiction,  
13 which is a fairly low bar, and plaintiff's jurisdictional  
14 allegations are specific and substantive.

15 Plaintiff has supplied documentary evidence supporting  
16 his contention that LG Chem has contact with Virginia sufficient  
17 to support personal jurisdiction, and it has also alleged facts  
18 that could and would establish that LG Chem has sufficient  
19 contact with Virginia to support personal jurisdiction and  
20 plaintiff asks for jurisdictional discovery in order to  
21 ascertain these facts.

22 For instance, Appendices A and B to the declaration of  
23 Nickie Bonenfant, which plaintiff appended to his response in  
24 opposition to LG Chem's motion to dismiss used publicly  
25 available shipping information based on bills of lading for

1 ships entering the United States through the Port of Norfolk to  
2 show that LG Chem shipped lithium-ion batteries to Virginia  
3 through Virginia's ports.

4 THE COURT: Excuse me, Mr. Cross. Does plaintiff know  
5 whether those lithium-ion batteries that were either shipped  
6 into Virginia or trans-shipped through Virginia elsewhere into  
7 the United States included the 18650 battery that appears to be  
8 in dispute in this case?

9 MR. CROSS: Plaintiff is not aware, because the bills  
10 of lading in question do not say what kind of lithium ion  
11 battery it is, whether it's an 18650 or a 21700. They're silent  
12 as to that. And that is one of the reasons why we're asking for  
13 jurisdictional discovery, because jurisdictional discovery would  
14 reveal, for instance, whether those shipments did in fact  
15 contain 18650s, which would confirm or deny the statements made  
16 by Mr. Lee in his declaration that claimed that LG Chem never  
17 shipped any 18650 lithium-ion cells prior to 2019.

18 And plaintiff also asks for jurisdictional discovery  
19 in order to know the full extent of LG Chem's knowledge of where  
20 and when its 18650 batteries and other batteries were reaching  
21 the U.S. market in general and the Virginia e-cigarette market  
22 in particular. The plaintiff alleges that LG Chem knew or  
23 should have known that its batteries were entering those markets  
24 since 2015 or 2016, but jurisdictional discovery would reveal  
25 correspondence between LG Chem and (audio interrupted) related

1 to LG Chem's knowledge of whether its 18620 batteries were  
2 reaching the Virginia e-cigarette market. And with respect to  
3 plaintiff maintains that the Court should not interpret his  
4 request for jurisdictional discovery as a fishing expedition,  
5 it's really just to ascertain the full picture, because of  
6 course much of this information isn't publicly available. These  
7 bills of lading, for instance, are publicly available, but the  
8 vast majority of the information that would confirm the very  
9 specific factual allegations plaintiff made in his complaint and  
10 in his response in opposition to LG Chem's motion to dismiss  
11 would -- could and would be confirmed by jurisdictional  
12 discovery, Your Honor.

13 THE COURT: Let me stop you there. I've got a -- two  
14 questions, actually.

15 So you've referenced twice this question of whether or  
16 not there is a fishing expedition going on. What is the  
17 standard that applies to the Court's decision whether to permit  
18 jurisdictional discovery, and have you satisfied that?

19 MR. CROSS: It's -- I believe, Your Honor, that  
20 it's -- pardon me, I need to...

21 It has to be related to specific facts plaintiff has  
22 to -- and again, plaintiff has made specific factual allegations  
23 with reference to LG Chem's contact. And I apologize...

24 THE COURT: Talk to me about then these appendices  
25 submitted by Mister -- I'm not sure if I'm pronouncing his name

1 right -- Bonenfant, B-o-n-e-n-f-a-n-t, I believe, regarding this  
2 data that was collected by his firm ImportGenius, which shows  
3 that there were numerous shipments by LG Chem into the Port of  
4 Norfolk and/or also shipments, I guess is it also to consignees  
5 in the state of Virginia and the Commonwealth of Virginia,  
6 including the Eastern District of Virginia?

7 MR. CROSS: That's correct, Your Honor. Ms. Bonenfant  
8 is an employee of ImportGenius, and she provided the declaration  
9 which was intended to show that these are -- I mean, this is  
10 publicly available information, of course, bills of lading for  
11 ships that come into the Port of Norfolk and other ports. The  
12 Virginia consignees are the entities within Virginia to which  
13 these shipments were bound where they were not shipped through  
14 the Port of Norfolk. So whether they came in through the Port  
15 of Los Angeles or some other port in the United States, if they  
16 were in fact eventually bound for Virginia entity, those are the  
17 Virginia consignees, and I believe -- let me just confirm  
18 this -- that there were, I believe, 58 shipments related to  
19 lithium-ion batteries that were revealed in those reports that  
20 were to be sent to Virginia consignees.

21 THE COURT: All right. I didn't mean to interrupt  
22 you. If you have additional argument I'm happy to hear it. But  
23 let me ask you, so your filing indicates you want limited  
24 discovery, you want to depose the declarant, Mr. Lee. What  
25 specific types of discovery do you seek, how long do you think

1 it'll take you to conduct it, recognizing that the Court wants  
2 to keep this case moving forward and not, you know, have some  
3 huge detour involving massive jurisdictional discovery that may  
4 or may not be germane to the question that's before the Court?

5 MR. CROSS: Your Honor, we would ask for written  
6 discovery, including interrogatories, requests for admission and  
7 requests for production. I anticipate that at a minimum we  
8 would need 60 days. That's what we would ask for.

9 As far as the time within which to conduct discovery  
10 and, of course, resolve any conflicts we might have after the  
11 written discovery obviously we would wish to depose Mr. Lee to  
12 determine or to ask both about his knowledge of LG Chem's  
13 shipment of lithium-ion batteries into the States and also the  
14 extent to which LG Chem may ship batteries to intermediaries  
15 that it knows will in turn drop those batteries right into the  
16 Virginia e-cigarette market. So those are the topics that we  
17 would like to ask Mr. Lee about, amongst others.

18 THE COURT: What is plaintiff's position on whether  
19 any discovery granted or permitted should be reciprocal?

20 MR. CROSS: Plaintiff would be amenable to that in the  
21 spirit of fairness. So LG Chem would, of course, be entitled to  
22 propound discovery upon plaintiff in turn.

23 THE COURT: And I don't recall that it's in the  
24 amended complaint, but have you been able to identify where  
25 Mr. Grizzard, the plaintiff, allegedly bought this battery?

1                   MR. CROSS: We have not, Your Honor. It's -- his  
2 memory is that it -- was to be frank, he can't recall  
3 specifically where he purchased it, but he knows that it was in  
4 Virginia because he didn't purchase any other battery supplies  
5 from outside of Virginia, I believe.

6                   THE COURT: Okay. Do you have anything further?

7                   MR. CROSS: I do not, Your Honor.

8                   THE COURT: Let me hear from counsel for defendant.

9                   MR. HODGE: Rachel Hedley will be arguing for the  
10 defendant, Your Honor.

11                  THE COURT: Okay. Thank you.

12                  Ms. Hedley?

13                  MS. HEDLEY: Thank you, Your Honor. May it please the  
14 Court. I appreciate the opportunity this morning, Your Honor.

15                  And of course plaintiff did not file any motion for  
16 jurisdictional discovery or articulate what plaintiff was  
17 seeking. Our position as outlined in the briefs is that we  
18 don't believe jurisdictional discovery is necessary. I will  
19 restrict my comments to the Court's questions and comments by  
20 counsel; that I understand the Court does not want us to argue  
21 the merits of the motion, but just the discovery issue.

22                  THE COURT: Correct.

23                  MS. HEDLEY: So to that point I would like to talk  
24 about a couple of things. First of all, the evidence that LG  
25 Chem submitted with its motion directly contradicts the

1 allegations talking about shipping batteries, and in particular  
2 the 18650s that are at issue. So we introduced admissible  
3 evidence that there were no shipments of 18650s into Virginia  
4 from the time period in the plaintiff's complaint from 2012  
5 until the date of incident, August 20th of 2019.

6 THE COURT: Let me ask you about that. So I read  
7 Mr. Lee's affidavit and supplemental declaration. I have them  
8 here. And unfortunately, I guess, I didn't think it was quite  
9 as clear as you just argued. So in Paragraph 7 of his  
10 declaration that's dated April 15, 2022, which was his  
11 supplemental declaration, in the second sentence he references  
12 Appendices A and B, and he says he's unfamiliar with the format  
13 of the charts and cannot verify the accuracy of the information  
14 that they contain. And then, you know, if I read further down  
15 the affidavit then he says, well, I can verify that none of the  
16 entries of Appendices A or B reflect shipments by LG Chem of  
17 cylindrical lithium-ion battery cells including 18650 battery  
18 cells. Those two items don't really seem to work together.  
19 One, he says I can't make heads nor tails of what that  
20 information that's contained in the appendices but, by the way,  
21 I've figured out that the information contained in the  
22 appendices demonstrates we didn't submit 18650s -- or didn't  
23 sell them or ship them into Virginia. What am I to make of  
24 that?

25 MS. HEDLEY: Thank you, Your Honor. I appreciate

1 that. If I could just -- and I will respond specifically to  
2 that question, because I think I can shed some light on that for  
3 the Court.

4           If I could go back to the original declaration, it's  
5 in Paragraph 13 where, at the last sentence, Mr. Lee states that  
6 "From the time period 2012 until plaintiff's alleged incident on  
7 August 20th of 2019, LG Chem did not have any distributors of  
8 its 18650 lithium-ion cells in Virginia" -- and that was alleged  
9 in the complaint -- "and did not ship any 18650 ion cells to  
10 anyone in Virginia."

11           THE COURT: Well, let me stop you and ask you right  
12 about that. He doesn't say whether the 18650s were  
13 trans-shipped through the Port of Norfolk to other locations.  
14 So how am I -- what am I supposed to know about that?

15           MS. HEDLEY: Well, obviously the argument, our  
16 argument in our motion, Your Honor, is that what matters is the  
17 contact with Virginia. And I know the Court does not want me to  
18 argue the legal analysis, but the evidence that was put in  
19 contradicts the allegations in the complaint where the plaintiff  
20 alleges that LG Chem shipped mass quantities of its product into  
21 Virginia. And that was set out in Paragraphs 30 through 32 of  
22 the amended complaint. Didn't specifically say tens of  
23 thousands or millions of 18650s, it said tens of thousands of  
24 products including the cylindrical lithium-ion battery products  
25 at issue here. So this is in response to a specific allegation

1 in the plaintiff's complaint shipped these particular battery  
2 cells to Virginia, and so this is rebutting that saying, no,  
3 that did not happen.

4           But if I could go on --

5           THE COURT: I understand that point. So can you  
6 answer my question though now?

7           MS. HEDLEY: Sorry. I do want to make sure that I'm  
8 answering. I wanted to answer the question about the  
9 appendices, but if you want me to answer...

10          THE COURT: Yes. So I just want to circle back. His  
11 affidavit doesn't say whether the 18650s were trans-shipped  
12 through the Port of Norfolk; so they're shipped to Virginia,  
13 received in the Port of Norfolk and then trans-shipped elsewhere  
14 in the United States. Did that occur and is there anywhere else  
15 in his declarations where he indicates whether that occurred?

16          MS. HEDLEY: So we did not include that information in  
17 support of the motion because our -- again, our argument is that  
18 the sales would need to come to Virginia. If cells entered the  
19 United States at a port in Virginia on their way to, you know,  
20 Ohio, and this plaintiff purchased them and used them and  
21 alleged to be injured in Virginia, then our argument -- and  
22 again, I know the Court doesn't want me to get into that --  
23 would be that it would not be relevant or support jurisdiction  
24 simply because a ship that brought a product from Korea to the  
25 United States happened to arrive at a port in Virginia.

1           But if I may, Your Honor, if I may go back to these  
2 appendices and talk about that a little bit, because I think  
3 that that will answer some of the Court's questions?

4           THE COURT: Sure.

5           MS. HEDLEY: So I have seen this chart and its  
6 appendix which is supported by this declaration. So a company  
7 called ImportGenius, which is just a private company that anyone  
8 could sign up and have a subscription to, and as is explained in  
9 the extensive declaration of Ms. Bonenfant, ImportGenius is  
10 providing a service where ImportGenius states that they are  
11 going around and finding bills of lading and other information  
12 of which the best evidence is U.S. Customs records, and typing  
13 it into their database and then allowing people to subscribe to  
14 that database and then run these Excel charts which are -- I  
15 think were provided here on a .pdf but typically available in an  
16 Excel, a native Excel that you could navigate that information.  
17 And so these are not documents created by LG Chem. The bill of  
18 lading would typically be with a ship vessel or an invoice, and  
19 the customer that's importing a product into the United States  
20 would fill out Customs declarations and give that to U.S.  
21 Customs. And so this is ImportGenius saying, look, we go around  
22 and we get this Customs information, we type them into our  
23 database, and you can trust us that it's accurate.

24           And my argument is not focused on the inadmissibility  
25 of these records; however they are inadmissible in our view

1 because there's nothing from U.S. Customs verifying the data,  
2 and these are not records created by LG Chem.

3                   And so to the extent the supplemental declarations  
4 says I can't verify these charts, what Mr. Lee is saying there  
5 is that this is, this is import information that is somehow  
6 reported to U.S. Customs, retained by U.S. Customs, some third  
7 party has gone and gathered it, and so I don't know how Mr. Lee  
8 would be expected to verify something that has changed hands  
9 through the customer in the United States importing it and  
10 reporting to U.S. Customs this is what it was, and then U.S.  
11 Customs having it in their database and then ImportGenius typing  
12 it into their database. So from an evidentiary standpoint, I  
13 hope the Court could accept that not being able to verify that  
14 information is not an LG Chem document.

15                   But moving on to explain how it is that he could go on  
16 to say there's nothing in here that contradicts my statement is  
17 because, for example, on Appendix A -- so in the briefing and in  
18 the affidavit, plaintiff says that there are, I believe the  
19 number was 906 entries, and stated there are 906 entries on  
20 Appendix A that show shipment of product by LG Chem into the  
21 Port of Virginia. But then if you go on you see where plaintiff  
22 says but actually of those 906 entries, 11 of them are  
23 lithium-ion batteries. 11. And I was able to, and Mr. Lee able  
24 to look at that chart -- and Your Honor could do this as well --  
25 open up that .pdf and search just for the word "battery", and if

1 you were to search in the .pdf for the word "battery" you would  
2 find probably these 11 entries, and they would show a  
3 description. Some of them just say lithium-ion battery, some of  
4 them say lithium-ion polymer battery, then they show an address  
5 and recipient and who they're going to.

6 THE COURT: All right.

7 MS. HEDLEY: These are public records. But I'm sure  
8 Your Honor could understand that the locations and identities of  
9 LG Chem's customers is confidential information, and so I'd  
10 prefer and I'm not at liberty to kind of go into detail in an  
11 open public court hearing, but we all have these exhibits. And  
12 so if you search the exhibit and you see, for example, that it  
13 says lithium-ion -- excuse me, lithium polymer battery and it  
14 shows -- some of the entries show they're going to a car  
15 company. So even though he cannot verify that that is actually  
16 the correct and accurate representation of the shipment because  
17 it's not LG Chem's record, he can still look at that description  
18 and say a lithium polymer battery is not an 18650 lithium-ion  
19 cell, it's a different type of product. In addition, that car  
20 company doesn't buy 18650 cells from us. So even though I don't  
21 know exactly what this chart is, I didn't create it, LG Chem  
22 didn't create it, I can still look at the descriptions that are  
23 given, and looking at those descriptions I can see that those  
24 shipments -- and again if you scroll through, I believe that on  
25 Appendix A, if you were to search for the word "battery" and

1 scroll through them, you would find only two recipients, and one  
2 of them is a car company, another one is a company that's  
3 identified there on that chart, and neither of them are vape  
4 stores, neither of them are in this entry.

5                   But also if you look at them, the dates are either  
6 hashed out with hashtag marks so it doesn't show the date. So  
7 again, how could he verify that information when it's  
8 incomplete, and that's probably because it was in Excel, and as  
9 I'm sure Your Honor knows, if you take an Excel and there's data  
10 in a field and you don't drag the field wide enough when you  
11 print to .pdf, it just prints hashtag marks. And so I don't  
12 have the Excel, I only have the .pdf and I see the hashtag  
13 marks. I do see many of these transactions postdate the injury.  
14 Some of them are as late as April 2021.

15                   And so in reviewing that Appendix A and reviewing  
16 those 11 battery related transactions, I can see -- I can look  
17 at the identity of who received it, I can look at our sales  
18 records and I can say, no, we didn't ship 18650s to those  
19 entities. And so that's how he can explain that and illustrate  
20 to the Court that that's not what those shipments are.

21                   Similarly on Appendix B, which I believe is referenced  
22 in shipments that came into a port -- which I think is Your  
23 Honor's question -- that came in to a port in Virginia but maybe  
24 went somewhere else, and again, I think if you, if you look at  
25 those -- again, you can search, and I believe that there's

1 one -- there may be one transaction -- you can search these  
2 charts for 18650. And if somebody designated that it was an  
3 18650 cell, that would appear in the chart, and I've seen those.

4 There are other states, for example, California, where  
5 LG Chem does ship 18650 cells directly to customers in  
6 California, equipment manufacturers and battery packers in  
7 California. They come into the California port, they go to the  
8 California entities. And if the plaintiff were to pull a record  
9 of that, they would oftentimes reflect an 18650, it just depends  
10 on the importer how carefully they describe. Oftentimes they  
11 will put 18650 if that's what it is. And again, I've seen this  
12 in other lawsuits. I know we have cited in the briefing to  
13 other courts that have been grappling with these same issues and  
14 so I've seen these before, and they will sometimes say 18650,  
15 but often they'll just say battery or battery products. And if  
16 the entry just says battery, that doesn't say a whole lot about  
17 what it is, but our witness was able to look at that shipment,  
18 look at who it went to, look at the sales data, and say, well, I  
19 know that's not an 18650 because we never shipped any 18650s to  
20 that entity.

21 But in terms of these shipments, I mean, the Appendix  
22 A, 906 transactions, but 11 of them having to do with batteries.  
23 And from the dates that I can even see, most them, I believe,  
24 are after the date of the incident.

25 And so that's a long explanation, and I hope it

1 answers the Court's question, about both of those issues.

2 So as to the first question I think was is it possible  
3 that LG Chem shipped 18650s that came into Port of Virginia and  
4 went somewhere else in the United States? Is that possible? I  
5 don't -- that is possible. I don't immediately have that  
6 information, but I believe that if the plaintiff had it or could  
7 find it in these databases, to the extent they're --

8 THE COURT: I think what plaintiff is -- plaintiff's  
9 argument was that they don't know that because the information  
10 that -- this ImportGenius stuff is essentially mostly a  
11 compilation of government record, you know, regarding imports  
12 into the United States. So it's sort of a form of business  
13 intelligence and data that apparently they have compiled and,  
14 you know, found it useful to market to others for whatever  
15 purposes that they're interested in. But it doesn't look like  
16 the data even for any of these shipments has a detailed  
17 description of what was included in each shipping container  
18 that's covered by any particular shipment. So there is some --  
19 I would agree with you that, in some instances, there are  
20 descriptors that are more detailed than others, but in others  
21 the descriptors are very vague and incomplete. So I don't know  
22 how plaintiff would know that information.

23 MS. HEDLEY: Right. And so to the extent there's a  
24 question about discovery, which, again, our position is that  
25 it's not warranted and hasn't established a need, but to the

1 extent plaintiff's argument is we need discovery because LG Chem  
2 said they didn't ship cells into Virginia and we have shown you  
3 directly contradictory evidence that says oh, yes, they did, I'm  
4 simply trying to illustrate for the Court that that is not the  
5 case. There is no evidence that the plaintiff has submitted  
6 that contradicts this sworn statement. So if there were written  
7 jurisdictional discover, for example, and an interrogatory or  
8 request that says please produce any invoices showing a shipment  
9 of 18650 cells from LG Chem, Limited to anyone in Virginia  
10 within the time period 2012 until August 20th of 2019, the  
11 answer to that request would be none, consistent with the sworn  
12 statement that Mr. Lee submitted based on, as he stated in his  
13 declaration, based on his review of LG Chem's sales records. So  
14 to the extent the Court has a question about whether or not LG  
15 Chem, that statement, that sworn statement is contradicted by  
16 plaintiff's exhibits, then of course my position is it's  
17 certainly not. And to the extent the Court wants to allow  
18 plaintiff to serve some limited written discovery to ask that  
19 question, then the answer will be consistent with his  
20 declaration, because it's just simply true. There were no  
21 shipments into Virginia of 18650 battery cells.

22 And so I'd also like to address if I may plaintiff's  
23 argument talking about what discovery plaintiff wanted. He  
24 talked about two different things. One is what were the  
25 shipments coming into Virginia, which I think we just talked

1 about at length, and that plaintiff doesn't know exactly what  
2 they were. And I think that if the Court is inclined to allow  
3 jurisdictional discovery, that can be handled with some  
4 targeted, limited written requests that can be promptly  
5 answered. But then plaintiff went on to say that we would like  
6 to know the full extent of LG Chem's knowledge as to when its  
7 18650 batteries were reaching U.S. markets in general. That is  
8 an incredibly broad statement, a broad request. It is not in  
9 any way limited to the Commonwealth of Virginia. It is not in  
10 any way limited to the claims at issue in this case. And again,  
11 I know Your Honor does not want me to address the merits of the  
12 motion, but I find it a little bit difficult not to respond to  
13 the request for discovery without touching at least on the  
14 background for the motion, which is that the standard to be met  
15 is whether the plaintiff's claims arise out of or relate to  
16 contact that LG Chem formed with Virginia. And I would even  
17 refer Your Honor to Footnote 6 in the Wallace case, Wallace v.  
18 Yamaha Motors, which is unpublished, but it's the Fourth  
19 Circuit's decision earlier this year, in a motorcycle case post  
20 Ford talking about how did Ford impact that products liability  
21 case, and in Footnote 6 reiterates again that the court reviews  
22 only the defendant's -- in that case it was South Carolina --  
23 but South Carolina-directed conduct to determine whether the  
24 claims arise out of or relate to --

25 THE COURT: Refresh my recollection, Counsel. In

1   Wallace did the Court permit some limited jurisdictional  
2   discovery?

3                   MS. HEDLEY: I believe that was the case, Your Honor.  
4   And I apologize that I don't remember right off the top of my  
5   head. I know the way the case came up, as Your Honor may  
6   remember, was that the district court granted a motion to  
7   dismiss before the U.S. Supreme Court decided Ford. And then  
8   the case went up on appeal. So at that time I think it was very  
9   clear that "arises out of" standard was the only standard, and  
10   by the time the case went up on appeal to the Fourth Circuit,  
11   the U.S. Supreme Court had decided Ford, and then there was a  
12   big discussion about whether Ford changed the outcome, and the  
13   Fourth Circuit concluded in that case, I think the facts were  
14   undisputed, but it was a South Carolina resident who somehow had  
15   gotten this motorcycle from someone, perhaps a friend in South  
16   Carolina, but was out of the state at the time, had the injury  
17   out of state, and the accident --

18                  THE COURT: I think the accident was in Florida,  
19   right?

20                  MS. HEDLEY: Correct. Yes, Your Honor.

21                  So those facts are distinguishable. But still, in  
22   that case the plaintiff argued, well, look, Yamaha sells  
23   motorcycles in South Carolina, that's good enough after Ford,  
24   and the Fourth Circuit said it's not. You've got to focus on  
25   defendant's conduct directed to this state. And so that's the

1 basis for our argument that jurisdictional discovery, if it's  
2 permitted, we believe should be in line with the relevant legal  
3 standard. And so obviously our argument on the question of  
4 whether or not knowledge or awareness that these third parties  
5 were diverting these cells into an unauthorized market, I mean,  
6 that's not in dispute. And so plaintiff's request for discovery  
7 regarding when LG Chem learned how it knew throughout the entire  
8 United States for what I anticipate would be for an unlimited  
9 period of time is not sort of narrow, limited or in any way  
10 focused on contact with Virginia related to this particular  
11 product at issue.

12 And so to that point, if the Court were to allow  
13 jurisdictional discovery, we would respectfully submit it should  
14 be limited in time. Plaintiff asked for at least 60 days. I  
15 would ask a 60-day limit. We also would object that it would be  
16 premature to decide that a deposition is required.

17 THE COURT: I'm sorry, could you repeat the last part?  
18 I just couldn't hear you.

19 MS. HEDLEY: I'm sorry, yes. I said that plaintiff  
20 said at least 60 days, and our request would be that plaintiff  
21 would be limited to 60 days with instructions to serve any  
22 requests in a timely fashion, as the Court says, so we can keep  
23 this issue moving and we'd be able to return promptly with a  
24 renewed motion to dismiss, as I'm confident we would do.

25 I also said that our position is that there's no basis

1 at this time to order or even to ask for a deposition, which  
2 should only be allowed, I think, in a jurisdictional discovery  
3 setting, if in fact the written records are somehow unclear or  
4 contradictory. So I didn't they will be, and so we would oppose  
5 the request at this time for a deposition as premature and  
6 unwarranted on the facts.

7                   And so again, our request would be, again, we don't  
8 believe there's a basis for jurisdictional discovery, but if the  
9 Court is inclined to order, we believe it should be limited to  
10 the product at issue in this case, which is the 18650  
11 lithium-ion cells and contact with Virginia specifically, and  
12 some reasonable time period prior to the plaintiff's incident.

13                   Thank you, Your Honor. If there were other questions,  
14 I'm glad to answer them.

15                   THE COURT: Sure. Does -- if I authorize some limited  
16 discovery, does the defense want reciprocal discovery rights or  
17 no?

18                   MS. HEDLEY: If I may, Your Honor, I'm not sure that I  
19 can answer that at this time. Ordinarily I would say that my  
20 client is not subject to personal jurisdiction and would not  
21 affirmatively engage in litigating the merits of the case. I  
22 would note that, you know, these questions about how did this  
23 battery get here and what's the supply chain, the supply chain  
24 does work in two directions. And if the plaintiff is not going  
25 to conduct discovery from the vape store or the various vape

1 stores or identify the seller of the supply chain, it's sort of  
2 difficult for my client to prove a negative, right? I mean, LG  
3 Chem did not supply these vape stores. How the vape stores got  
4 it, I can't know. That information would come from the vape  
5 stores. And so I would ask, I guess, for the opportunity to  
6 consider that, but would appreciate -- and I believe based on  
7 plaintiff counsel's comments this would not be disputed -- but  
8 that there's no waiver of LG Chem's personal jurisdiction  
9 defense if LG Chem were to engage in limited affirmative  
10 discovery to get facts related to this jurisdiction motion. So  
11 I would want to make clear if plaintiff's counsel was agreeing  
12 that there is no waiver if we proceeded in that way.

13 THE COURT: All right. Thank you for that. I  
14 probably would give you an opportunity to consult with  
15 plaintiff's counsel about that, and I'll talk more about that in  
16 just a moment. I do want to give plaintiff a chance to respond,  
17 but let me ask you, with respect to these import records shown  
18 in Appendices A and B, does LG Chem distinguish how it  
19 identifies lithium-ion batteries by virtue of whether or not  
20 they're packaged in, you know -- or let's say there's a battery  
21 pack that was sold that contained, I don't know, 30 lithium-ion  
22 batteries and perhaps they're 18650-sized cells. Is that -- as  
23 opposed to, say, the individually shipped, you know, packages  
24 containing individual 18650 cells, does LG Chem differentiate in  
25 terms of how it identifies those products? So this kind of goes

1 to what you were telling me about Mr. Lee's statement in his  
2 declaration.

3 MS. HEDLEY: I think I understand the question, so --  
4 and if I can just slightly detour to answer the question, so of  
5 the lithium-ion batteries, and I mentioned earlier these  
6 polymer-type cells. There are three main types of these cells.  
7 One is prismatic and one is a pouch-type, and then there is the  
8 cylindrical, the 18650, which, again, is in the declaration.  
9 That's the millimeters, 18 millimeters in diameter, 65 in  
10 length, then the 0 is cylindrical. So it's the size of these  
11 different types of cells. LG Chem ships those cells only to  
12 entities that are going to pack them in a battery pack, put them  
13 into this protective circuitry in some sort of device. And the  
14 way the cells are shipped -- and I think I'm answering your  
15 question -- is that there might be occasions where LG Chem  
16 itself might send a battery pack that's been assembled and might  
17 have multiple cells in it, prismatic battery cells, but the  
18 shipping invoice would refer to it as a battery pack, perhaps, a  
19 module or a system, an entire system. If LG Chem were shipping  
20 18650 cells, which I'll address in particular because that's  
21 what at issue here, they would be in a box, I believe it's boxes  
22 of 100, maybe it's 200, and they would go into these pallets in  
23 the boxes of 100 to the battery packers or the equipment  
24 manufactures who have agreements with LG Chem, who know that  
25 they're for, and are purchasing them for the purpose of

1 embedding them with the protective circuitry and putting them in  
2 the products.

3 So what the actual shipping invoice says is dependent  
4 on the quantity of cells being shipped. And so I would just  
5 sort of throw out a number, if there was a shipment of 500  
6 cells, I believe there would be an invoice, a bill of lading  
7 that would show LG Chem, Limited as the shipper, it would have  
8 the name of the boat, it would have the recipient, and it would  
9 illustrate on it how many cells, what was the quantity and  
10 price, and that information of course would be proprietary,  
11 which, if that's an issue in the jurisdictional discovery, we  
12 would just need a confidentiality order and we would consult  
13 with plaintiff on that.

14 But what information ImportGenius take from Customs  
15 and puts into the database, I don't know. Like I couldn't tell  
16 you how well it matches up, but I could tell you that our  
17 witness can certainly look at that chart and kind of get a sense  
18 for -- look at the name of the entity, look at the date, and  
19 it's not going to match up exactly, but they could look at that  
20 and say, okay, I know that company, we do ship polymer cells to  
21 them, and can sort of figure it out that way. But the  
22 description that's being put on that ImportGenius chart, I  
23 don't -- I don't know who typed that in. I don't know who  
24 chooses what words to put there, I just know that if you look  
25 at --

1 THE COURT: It might be an import broker, you know?

2 MS. HEDLEY: Right.

3 THE COURT: It could be any number of people.

4 MS. HEDLEY: So some might choose to be more specific

5 and you'll see these sort of long entries that are very long,

6 and some of those have 18650s, you see other ones which are

7 clearly a typo, it might say "lithium lithium battery," or

8 "lithium battery battery", or whatever they have typed in.

9 Others might say, you know, synthetic rubber, right? So those

10 are some of the other types of products. All different types of

11 petro-chemical names. Most of those shipments of the 906

12 shipments on Appendix A are petro-chemical products, batteries,

13 and they'll be described that way. ABS rubber, synthetic rubber

14 or words like that.

15 I hope that answered the question. I know I...

16 THE COURT: Yes. That's helpful. Thank you.

17 I guess I had a couple other questions relating to

18 this, and you know, one of the issues that is difficult for the

19 Court to assess at this stage is the opaqueness, what I would

20 characterize as the opaqueness of, at least at first glance, of

21 Mr. Lee's declarations, you know, at this stage of the case.

22 And given the Court's limited knowledge of pertinent facts,

23 including some that you've supplied today relating to this

24 matter, but you know, he makes various declarations, but they

25 kind of prompt other questions in the Court's mind. One of them

1 is do you know whether any non-Virginia U.S. entities -- and by  
2 that I mean authorized distributors or agents of LG Chem -- made  
3 sales of 18650 batteries or products containing 18650 batteries  
4 into Virginia. And I'll use his limitation: Commercial users.

5 MS. HEDLEY: So, okay -- so I -- to answer that  
6 question I do want to just preface my comments by saying I think  
7 this case is very unusual in a products liability context. I  
8 think when there's a personal jurisdiction argument you probably  
9 more typically see a manufacturer who has an authorized  
10 distributor and there might be some dispute about did that  
11 manufacturer, you know, somewhere in Asia who had a distributor  
12 in Georgia, but it was that relationship, and like in the Boto  
13 case from, I think, 2007 that plaintiff referred to where there  
14 was this Chinese manufacturer that had a contract with Walmart  
15 and Target to put their, I think it was artificial Christmas  
16 trees in every Walmart and Target in the country. So this is  
17 very unusual in that LG Chem, Limited does not -- never did --  
18 supply these 18650 cells to Target or Walmart or these vape  
19 stores as a standalone where they would go to the checkout  
20 counter where you see your AAs and grab some 18650s. That  
21 didn't happen. So their U.S. customers were limited to -- there  
22 were distributors in two U.S. states, and those distributors  
23 were authorized to distribute only to battery packers. And all  
24 the information I have is that that's all they distributed to,  
25 was to battery packers, not to vape stores. But for example --

1 I would just throw out a hypothetical -- if LG Chem shipped  
2 18650 cells to a distributor in Illinois, and that distributor  
3 then turned around and distributed those cells to the  
4 manufacturer of, I think it's a scooter, for example, which is I  
5 think one of the type of products that plaintiff was talking  
6 about, so now you have a distributor in Illinois putting these  
7 cells into a scooter, and perhaps that battery packer then sells  
8 to the scooter manufacturer, and the scooter manufacturer may be  
9 in Pennsylvania, and then sells those scooters, and I don't know  
10 where you buy electronic scooters, I prefer to walk, but maybe  
11 you go to Target or whatever you go, so there's so many  
12 intermediaries in that chain, I couldn't tell you -- and it may  
13 be the case, I'm sure there are, you know, there may be  
14 consumers riding around on scooters in Virginia and that scooter  
15 could theoretically be manufactured with an 18650 cell that came  
16 by way of a battery pack from somewhere else. I don't know  
17 that. But I feel like that's a different question than this box  
18 of cells that's being shipped to a distributor or an equipment  
19 manufacturer or battery packer to be packed in a protective  
20 circuitry.

21 So I want to make sure I'm answering that in a way  
22 that I hope is helpful to the Court. I think what we're talking  
23 about here is these boxes of cells that LG Chem is shipping,  
24 where are they going?

25 THE COURT: Right. And where potentially are those

1 authorized distributors and/or agents working with or for LG  
2 Chem, where are they're selling, you know, and specifically does  
3 that include Virginia customers. Independent of this whole  
4 consumers downstream getting access to some device with the  
5 batteries, were the distributors and/or agents working with LG  
6 Chem shipping those 18650 batteries to entities in Virginia?

7 MS. HEDLEY: And so that's why I guess it's a little  
8 bit difficult for me to answer the Court's questions about a  
9 limit on discovery without reference to the motion itself,  
10 because my position would be that even if LG Chem sold 18650  
11 cells to a distributor in Illinois who sold them to a battery  
12 packer who put them in an e-scooter in, again, hypothetically  
13 Pennsylvania --

14 THE COURT: Let's use Virginia. Change the  
15 hypothetical to a scooter manufacturer -- the distributor's  
16 sending the batteries to a scooter manufacturer in Virginia.

17 MS. HEDLEY: Okay. So if LG Chem sells a cell to a  
18 distributor in Illinois and the distributor in Illinois turns  
19 around and sells them to a scooter manufacturer in Virginia and  
20 the manufacturer takes those cells, puts them in a scooter and  
21 has its manufacturing facility in Virginia, I mean, I still  
22 don't think that would support jurisdiction because I don't see  
23 how that's related to these claims about buying a standalone  
24 battery for a vaping device.

25 And I also, I don't know how LG Chem discovery

1 responses would address that, but I'm sure we can discuss that  
2 with plaintiff's counsel.

3 I just -- again, for the record I just wanted my  
4 position to be clear that I don't see how that would support the  
5 jurisdictional discovery. So our objection would be to engage  
6 in wide-ranging discovery that ultimately has no possibility of  
7 supporting the exercise of jurisdiction because there is no  
8 suit-related conduct if someone is riding around on a scooter  
9 powered by a battery pack that's powered by an LG Chem cell that  
10 was shipped somewhere else, but it's a scooter, and it's  
11 embedded, and the consumer is never touching it, that's not  
12 related to a consumer who walks into a vape store, buys a  
13 standalone battery, walks out with it in his pocket and suffers  
14 an injury because it was in his pocket and interacted with  
15 something else in his pocket.

16 THE COURT: Let me ask you just one other question. I  
17 appreciate your answer, and obviously the facts aren't really  
18 before the Court and we're speculating, really, about what those  
19 facts are. But I do appreciate you trying to help me understand  
20 your client's arguments with respect to this matter, and  
21 obviously those are going to have to wait for another day.

22 But I'll just throw one other question out there,  
23 which at least is prompted: Did LG Chem authorize 18650  
24 batteries to be sold to manufacturers of e-cigarettes or vaping  
25 devices?

1 MS. HEDLEY: So LG Chem never authorized that for any  
2 vaping device that was designed to use a standalone replaceable  
3 battery. And so there is one type of device which I don't  
4 believe was sold in the United States until after the date of  
5 this injury where I believe there's a cell embedded. The  
6 consumer never sees it, wouldn't even know about it. But in  
7 terms of these device, these vaping devices that are  
8 manufactured using -- typically in other countries, but they're  
9 designing these vaping devices -- I don't know the particular  
10 type of device that was at issue here, but there are these  
11 vaping devices that are designed by some manufacturer to be used  
12 with a standalone cell. So you just take it and put the cell in  
13 and either charge the device that way or you take it out and put  
14 it in a charger, put it back in the cell, that's the way these  
15 devices are designed. LG Chem never, never authorized anyone to  
16 sell its 18650 cells to any manufacturer that was making those  
17 devices. And in fact -- and again, it has an extensive campaign  
18 warning people against doing this. Working with the CPSC and  
19 government agencies and various and other actions directed at  
20 consumers to just make -- put out the public information that  
21 these are not designed for this purpose, don't use them that  
22 way, don't buy them that way. And again, that's tangential to  
23 our jurisdictional argument, it's something plaintiff raised,  
24 but no, I want to answer the Court's question very specifically:  
25 No, LG Chem never authorized anyone to sell its 18650s to anyone

1 that was manufacturing these vaping devices that were designed  
2 to be used by taking one of these cells as though it was a  
3 standalone battery, putting it in, taking it out, putting it on  
4 the charger. And often that's what causes the problem, because  
5 the wrapper, that protective wrapper can get degraded when it's  
6 being put in and taken out, put in and taken out, or put in a  
7 charger. People put them in their pocket. Maybe there's keys  
8 in their pocket. Maybe there's something else metal in the  
9 pocket. Now you've got that degraded wrapper, some other metal  
10 touches the degraded, exposed part of the cell, and that's what  
11 causes the runaway in most instances.

12 THE COURT: Okay. Thank you very much, Ms. Hedley.

13 I'll be happy to hear plaintiff briefly.

14 MR. CROSS: Yeah. Yes, Your Honor. I'd just like to  
15 say that we do not oppose the confidentiality order should Your  
16 Honor grant us the opportunity to conduct jurisdictional  
17 discovery, nor would we consider any engagement in the discovery  
18 process by LG Chem to be a waiver.

19 We would just -- I would just like to say that I heard  
20 mention of, you know, these bills of lading not being sufficient  
21 because they're not produced by LG Chem. That's part of the  
22 reason we're asking for jurisdictional discovery, to get those  
23 documents that plaintiff can't access because they're not public  
24 that would show whether or not these bills of lading actually  
25 references the 18650s.

1           And I did ask for communications related to LG Chem's  
2 knowledge. One of the reasons that I asked for that is that in  
3 plaintiff's amended complaint, I believe in Paragraph 34,  
4 plaintiff did allege that LG Chem sells non-conforming  
5 batteries, 18650s, to entities in China that it knows to then  
6 resell them into the United States e-cigarette market including  
7 the Virginia e-cigarette market. And I know that LG Chem will  
8 probably object to this and advocate for a very narrow discovery  
9 process, but I would like to specifically request that  
10 discovery -- or that we be allowed to propound discovery that  
11 contemplates their commerce with those Chinese entities that  
12 plaintiff has alleged that LG Chem sells its batteries to with  
13 the knowledge that they enter the e-cigarette market in the  
14 United States and specifically in Virginia.

15           And I believe that's all I have, Your Honor.

16           THE COURT: Okay. Thank you, Counsel.

17           The Court is going to exercise its discretion to  
18 permit limited jurisdictional discovery directed to  
19 identification of facts pertaining to whether specific  
20 jurisdiction exists over LG Chem, Limited in this case.

21           I note that the plaintiff has already conceded that  
22 general jurisdiction over LG Chem does not apply. It doesn't  
23 appear there's a dispute about that.

24           I find that the information that plaintiff supplied to  
25 the Court, particularly the shipping data suggesting LG Chem

1 made numerous shipments into the Port of Norfolk and/or to  
2 Virginia consignees, including shipments of lithium-ion  
3 batteries, though perhaps the nature and type and kind of those  
4 batteries remains to be determined, coupled with what, at this  
5 stage, given the Court's limited information, given the limited  
6 information that's before the Court but coupled with sort of the  
7 opaque nature of Mr. Lee's declaration and his supplemental  
8 declaration that were submitted by LG Chem, causes me to  
9 conclude that a factual basis does exist here for jurisdictional  
10 discovery.

11                   Stated another way, simply, plaintiff's need for  
12 discovery and the basis for seeking it rises above the level of  
13 mere speculation.

14                   So what I'm going to do is direct the parties to meet  
15 and confer promptly on the question of the scope, nature and  
16 time frame for what you have repeatedly described today as  
17 limited discovery, recognizing that this case needs to move  
18 forward consistent with Rule 1's direction that the Rules be  
19 applied in a manner so as to facilitate the just, speedy and  
20 inexpensive determination of actions that are brought in federal  
21 courts, and also in recognition of this Court's regular practice  
22 of moving cases promptly and quickly so that we can allow  
23 parties to have their disputes addressed and resolved in a  
24 prompt fashion.

25                   So if the parties can agree, they are to file a joint

1 motion addressing their joint request concerning the scope,  
2 nature and time frame of such limited discovery. If the parties  
3 cannot agree on a joint proposal, then they each must submit  
4 separate proposals specifying what each party proposes  
5 concerning the kind of discovery to be allowed and the timeframe  
6 for its completion.

7           I'm going to direct -- and I'll issue an order today  
8 memorializing what I've just said -- but the joint and/or  
9 separate proposals to the Court -- and they're just proposals,  
10 the Court will ultimately make its own judgment about what  
11 discovery is appropriate -- shall be filed no later than 5 p.m.  
12 on Monday, June 27th, 2022. So you're going to need to meet and  
13 confer before that. And given what we're talking about in this  
14 case and the facts that you've described and discussed in the  
15 complaint and in the declaration and in the motions, I think you  
16 know what you need to get your arms around to address the  
17 question that's before the Court in the motion to dismiss, and I  
18 don't think an extended time period is necessary for that.

19           I will direct the parties also to submit a proposed  
20 protective order to the Court for its consideration -- or motion  
21 for entry of a protective order. And it would be very helpful  
22 that you could agree on a proposed order and submit that to the  
23 Court, and I'll direct that also be submitted by Monday the 27th  
24 not later than 5 p.m.

25           Also, the parties' joint or separate proposals shall

1 also include a proposed schedule for briefing any renewed motion  
2 to dismiss by LG Chem incorporating the results of the  
3 jurisdictional discovery.

4 So I intend to recommend to Judge Smith that, in light  
5 of my ruling today, that the pending motion to dismiss be denied  
6 without prejudice subject to renewal following the completion of  
7 this jurisdictional discovery.

8 So once I receive the proposals -- or proposal or  
9 proposals from you I'll issue a ruling next week addressing the  
10 limited discovery and schedule moving forward.

11 MS. HEDLEY: Your Honor, may I ask a quick question?

12 THE COURT: You may.

13 MS. HEDLEY: Does the Court contemplate a schedule for  
14 briefing -- we can discuss this, but does the Court have a  
15 preference to a sort of renewed motion response reply to the  
16 original motion or just supplemental briefs by each side?

17 THE COURT: I think probably my preference is going to  
18 be for a renewed motion that will deny what's out there now,  
19 since the facts are not, to my judgment, sufficiently joined,  
20 and following that jurisdictional discovery then we can start  
21 fresh. And I assume you probably won't have to make substantial  
22 revisions to your motions, and the arguments, the arguments will  
23 be the same. I'm certain the question will be what is the  
24 significance of any additional facts that are discovered to the  
25 question of specific jurisdiction in the case.

1 MS. HEDLEY: And if I may, Your Honor, one more  
2 question? I apologize. But with the motion denied without  
3 prejudice, leave to refile, would the Court's order address that  
4 the time to answer is stayed until after the renewed motion is  
5 ruled upon?

6 THE COURT: You can submit that as part of any  
7 proposals to the Court and I'll consider that, certainly.

8 MS. HEDLEY: Okay. Thank you.

9 THE COURT: Anything further that I can do for you  
10 today?

11 MS. HEDLEY: Not for us. Thank you, Your Honor.

12 MR. CROSS: No thank you, Your Honor.

13 MR. BRAKE: Thank you very much, Your Honor. It's  
14 been a pleasure.

15 THE COURT: Thank you everyone. Have a good day, and  
16 I'll look forward to receiving your proposals next week.

17 Court will be in recess.

18 (Whereupon, proceedings concluded at 11:57 a.m.)

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1                   CERTIFICATION  
23                   *I certify that the foregoing is a true, complete and*  
4 *correct transcript of the proceedings held in the above-entitled*  
5 *matter.*

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8                   Paul L. McManus, RMR, FCRR  
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